

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

ALLIANCE HEALTH SYSTEMS, LLC

PLAINTIFF

VS.

CIVIL ACTION NO. 4:06CV36LA

EMERGENCY STAFFING SOLUTIONS, INC.

DEFENDANT

ORDER

This matter came before the court on the Defendant, Emergency Staffing Solutions, Inc.'s Motion to Compel Plaintiffs' Responses to Discovery. The Motion seeks an Order requiring Alliance Health Systems, LLC, to produce documents that it has obtained, or will obtain, from Rush Health Systems, LLC. ESS contends that these documents are responsive to its discovery requests, although the specific requests have not been enumerated in accordance with Unif. Local R. 37.1(B).

Fed. R. Civ. P. 34(a) permits a party to request documents that are in another party's "possession, custody, or control." Here, Alliance argues that it does not have possession, custody, or control of documents that are in the possession of Rush Health Systems, LLC, a separate entity. Apparently, Alliance once had an ownership interest in certain assets that have been since purchased by Rush, and Alliance contends that it has no present business relationship with that entity. In fact, Alliance has been compelled to subpoena documents from Rush, and those parties are in the process of negotiating the timing and cost of obtaining those documents. ESS has not refuted these contentions.

This court cannot order a party to produce what it does not have. To the extent that Alliance obtains documents from Rush, and to the extent that those documents are responsive to discovery requests made by ESS, Alliance should serve those documents on ESS in a timely manner. Failure

to do so could result in the imposition of sanctions for failure to conduct discovery in a good faith manner. However, should ESS desire to obtain the documents more quickly than Alliance can provide them, it can serve its own subpoena on Rush. ESS's declaration that Alliance lacks sufficient documentation to support its claims is a matter that should be brought to the attention of the District Judge by way of a dispositive motion. To the extent that other discovery responses are incomplete, ESS should file a motion to compel in accordance with Unif. Local R. 37.1(B).

IT IS, THEREFORE, ORDERED that the Defendant, Emergency Staffing Solutions, Inc.'s Motion to Compel Plaintiffs' Responses to Discovery is hereby **denied**.

IT IS SO ORDERED, this the 28th day of December, 2006.

S/Linda R. Anderson
UNITED STATES MAGISTRATE JUDGE